IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 143 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BABUJI JAKSIJI THAKORE

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 143 of 2002

MS SUMAN PAHWA for Petitioner No. 1

MR D.P. JOSHI, AGP for Respondent State

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 14/02/2002

ORAL JUDGEMENT

The petitioner came to be detained by virtue of an order dated 20.12.2001 passed by the Commissioner of Police,

Ahmedabad City, Ahmedabad in exercise of power under Section 3 of the PASA Act. The petitioner seeks to challenge the said order by this petition under Article 226 of the of Constitution of India.

2. The grounds of detention indicate that the petitioner has been branded as a boot-legger. The detaining authority has considered four registered offences against the detenu under the Bombay Prohibition Act, however, no statements have been recorded.

3. Learned Advocate for the petitioner contended that the detaining authority has positively recorded a satisfaction that the activities of the detenu are detrimental to public health and public order. It is also recorded that this satisfaction is arrived at on the basis of documents available. She submitted that there is nothing on record to indicate that the activities of the detenu are detrimental to public order. Therefore, the satisfaction recorded by the authority is without basis and exercise of powers under Section 3 of the PASA Act would therefore be vitiated.

4. Learned Assistant Government Pleader Mr. D.P. Joshi has opposed to this petition. However, he also could not indicate any material from the detention papers to show that the activities of the detenu caused any disturbance to public order. The only material against the detenu is the registered prohibition cases wherein also there is nothing to indicate any disturbance of public order.

5. Having regard to the rival side contentions, the petition can be accepted on the ground canvassed by the learned Counsel for the petitioner. In absence of any material to indicate that the satisfaction recorded by the detaining authority for the need for exercise of powers under Section 3 of the PASA Act was genuine, the order cannot stand. If the satisfaction is recorded that the activities of the detenu are detrimental to public order, that satisfaction is without basis and exercise of power under Section 3 of the PASA on that could would be vitiated. Consequently, the detention also.

5.1 This situation can be viewed from a different angle also. Even if there was material available with the detaining authority which has been considered, then also those documents are not supplied to the detenu and therefore also the order of detention would be vitiated,

as the right of the detenu of making an effective representation would be adversely affected. The petition therefore deserves to be allowed on this ground.

6. The petition is therefore, allowed. Order of detention dated 20.12. 2001 passed by the Commissioner of Police, Ahmedabad City is quashed and set aside. Detenu - Babuji Jaksiji Thakore be released from detention forthwith, if not required in any other case. Rule made absolute. No costs. Direct service permitted.

(A.L.Dave,J.)

*/Mohandas